

Calendar No. 293

115TH CONGRESS
2D SESSION

S. 2152

To amend title 18, United States Code, to provide for assistance for victims of child pornography, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2017

Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. CORNYN, Mr. TOOMEY, Mr. BOOZMAN, Mrs. GILLIBRAND, Mr. COTTON, Mr. WHITEHOUSE, Mr. MCCAIN, Ms. MURKOWSKI, Mrs. CAPITO, Mr. TILLIS, Mr. BLUNT, Mr. BLUMENTHAL, Mr. CASEY, Ms. WARREN, Mrs. McCASKILL, Mr. HOEVEN, Mr. MERKLEY, Ms. HIRONO, Mr. KENNEDY, Mr. CRUZ, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JANUARY 16, 2018

Reported by Mr. GRASSLEY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend title 18, United States Code, to provide for assistance for victims of child pornography, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Amy, Vicky, and Andy
3 Child Pornography Victim Assistance Act of 2017”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The demand for child pornography harms
7 children because it drives production, which involves
8 severe and often irreparable child sexual abuse and
9 exploitation.

10 (2) The harms caused by child pornography
11 begin, but do not end, with child sex abuse because
12 child pornography is a permanent record of that
13 abuse and trafficking in those images compounds
14 the harm to the child.

15 (3) In *Paroline v. United States* (2014), the
16 Supreme Court recognized that “every viewing of
17 child pornography is a repetition of the victim’s
18 abuse”.

19 (4) The American Professional Society on the
20 Abuse of Children has stated that for victims of
21 child pornography, “the sexual abuse of the child,
22 the memorialization of that abuse which becomes
23 child pornography, and its subsequent distribution
24 and viewing become psychologically intertwined and
25 each compound the harm suffered by the child-vic-
26 tim”.

1 (5) Victims suffer continuing and grievous
2 harm as a result of knowing that a large, indetermi-
3 nate number of individuals have viewed and will in
4 the future view images of their childhood sexual
5 abuse. Harms of this sort are a major reason that
6 child pornography is outlawed.

7 (6) The unlawful collective conduct of every in-
8 dividual who reproduces, distributes, or possesses
9 the images of a victim’s childhood sexual abuse plays
10 a part in sustaining and aggravating the harms to
11 that individual victim. Multiple actors independently
12 commit intentional crimes that combine to produce
13 an indivisible injury to a victim.

14 (7) It is the intent of Congress that victims of
15 child pornography be fully compensated for all the
16 harms resulting from every perpetrator who contrib-
17 utes to their anguish. Such an aggregate causation
18 standard reflects the nature of child pornography
19 and the unique ways that it actually harms victims.

20 **SEC. 3. DETERMINING RESTITUTION.**

21 (a) DETERMINING RESTITUTION.—Section 2259(b)
22 of title 18, United States Code, is amended—

23 (1) in paragraph (1)—

1 (A) by striking “The order” and inserting
2 “Except as provided in paragraph (2), the
3 order”; and

4 (B) by striking “as determined by the
5 court pursuant to paragraph (2)” after “of the
6 victim’s losses”;

7 (2) by striking paragraph (3);

8 (3) by redesignating paragraph (2) as para-
9 graph (3); and

10 (4) by inserting after paragraph (1) the fol-
11 lowing:

12 “(2) RESTITUTION FOR TRAFFICKING IN CHILD
13 PORNOGRAPHY.—If the defendant was convicted for
14 trafficking in child pornography, the order of res-
15 titution under this section shall direct the defendant
16 to pay the victim (through the appropriate court
17 mechanism) an amount of restitution determined by
18 the court as follows:

19 “(A) DETERMINING THE FULL AMOUNT OF
20 A VICTIM’S LOSSES.—The court shall determine
21 the full amount of the victim’s losses that were
22 incurred or are reasonably projected to be in-
23 curred by the victim as a result of the traf-
24 ficking in child pornography.

1 “(B) DETERMINING A RESTITUTION
2 AMOUNT.—After completing the determination
3 required under subparagraph (A), the court
4 shall enter an order of restitution against the
5 defendant in favor of the victim in an amount
6 which is ~~not less than \$3000 and not greater~~
7 ~~than 1 percent of the full amount of the vic-~~
8 ~~tim’s losses when the full amount of a victim’s~~
9 ~~losses are greater than \$300,000. *between*~~
10 *\$3,000 and 1 percent of the full amount of the*
11 *victim’s losses.*

12 “(C) TERMINATION OF PAYMENT.—A vic-
13 tim’s total aggregate recovery pursuant to this
14 section shall not exceed the full amount of the
15 victim’s demonstrated losses. After the victim
16 has received restitution in the full amount of
17 the victim’s losses as measured by the greatest
18 amount of such losses found in any case involv-
19 ing that victim that has resulted in a final res-
20 titution order under this section, the liability of
21 each defendant who is or has been ordered to
22 pay restitution for such losses to that victim
23 shall be terminated. The court may direct the
24 victim to provide information concerning the

1 amount of restitution the victim has been paid
 2 in other cases for the same losses.”.

3 (b) ADDITIONAL DEFINITIONS.—Section 2259(c) of
 4 title 18, United States Code, is amended—

5 (1) in the heading, by striking “DEFINITION”
 6 and inserting “DEFINITIONS”;

7 (2) by striking “For purposes” and inserting
 8 the following:

9 “(4) VICTIM.—For purposes”;

10 (3) by striking “under this chapter, including,
 11 in the case” and inserting “under this chapter. In
 12 the case”;

13 (4) by inserting after “or any other person ap-
 14 pointed as suitable by the court,” the following:
 15 “may assume the crime victim’s rights under this
 16 section,”; and

17 (5) by inserting before paragraph (4), as so
 18 designated, the following:

19 “(1) CHILD PORNOGRAPHY PRODUCTION.—For
 20 purposes of this section and section 2259A, the term
 21 ‘child pornography production’ means conduct pro-
 22 scribed by ~~section 2251~~, ~~section 2251A subsections~~
 23 *(a) through (c) of section 2251*, section 2252A(g) if
 24 at least one of the offenses listed in this section is
 25 charged as part of a series of offenses *(in cases in*

1 *which the series of felony violations involves at least*
2 *1 of the violations listed in this section*), section
3 2260(a), or any offense under chapter 109A or
4 chapter 117 that involved the production of child
5 pornography, as defined in section 2256.

6 “(2) FULL AMOUNT OF THE VICTIM’S
7 LOSSES.—For purposes of this section, the term ‘full
8 amount of the victim’s losses’ includes any costs in-
9 curred, or reasonably projected to be incurred in the
10 future, by the victim, and in the case of a trafficking
11 in child pornography conviction, as a proximate re-
12 sult of all trafficking in child pornography offenses
13 involving the same victim, including—

14 “(A) medical services relating to physical,
15 psychiatric, or psychological care;

16 “(B) physical and occupational therapy or
17 rehabilitation;

18 “(C) necessary transportation, temporary
19 housing, and child care expenses;

20 “(D) lost income;

21 “(E) attorneys’ fees, as well as other costs
22 incurred; and

23 “(F) any other relevant losses incurred by
24 the victim.

1 “(3) TRAFFICKING IN CHILD PORNOGRAPHY.—
 2 For purposes of this section and section 2259A, the
 3 term ‘trafficking in child pornography’ means con-
 4 duct proscribed by section 2251(d), 2251A, 2252,
 5 2252A, section 2252A(g) if at least one of the of-
 6 fenses listed in this section is charged as part of a
 7 series of offenses (*in cases in which the series of fel-*
 8 *ony violations exclusively involves violations listed in*
 9 *this section*), or section 2260(b) .”.

10 (c) CLERICAL AMENDMENT.—Section 1593(b)(3) of
 11 title 18, United States Code, is amended by striking “sec-
 12 tion 2259(b)(3)” and inserting “section 2259(c)(2)”.

13 **SEC. 4. DEFINED MONETARY ASSISTANCE.**

14 Section 2259 of title 18, United States Code, is
 15 amended by adding at the end the following:

16 “(d) DEFINED MONETARY ASSISTANCE.—

17 “(1) DEFINED MONETARY ASSISTANCE MADE
 18 AVAILABLE AT VICTIM’S ELECTION.—

19 “(A) ELECTION TO RECEIVE DEFINED
 20 MONETARY ASSISTANCE.—Subject to para-
 21 graphs (2) and (3), if the defendant was con-
 22 victed of child pornography production, the vic-
 23 tim of child pornography production may choose
 24 to receive defined monetary assistance from the
 25 Child Pornography Victims’ Reserve established

1 under section 1402(d)(6) of the Victims of
2 Crime Act of 1984.

3 “(B) FINDING.—To be eligible for defined
4 monetary assistance under this subsection, a
5 court shall determine whether the claimant is a
6 victim of the defendant who was convicted of
7 child pornography production.

8 “(C) ORDER.—If a court determines that
9 a claimant is a victim of child pornography pro-
10 duction under subparagraph (B) and the claim-
11 ant chooses to receive defined monetary assist-
12 ance, the court shall order payment in accord-
13 ance with subparagraph (D) to the victim from
14 the Child Pornography Victims’ Reserve estab-
15 lished under section 1402(d)(6) of the Victims
16 of Crime Act of 1984.

17 “(D) AMOUNT OF DEFINED MONETARY AS-
18 SISTANCE.—The amount of defined monetary
19 assistance payable under this subparagraph
20 shall be equal to—

21 “(i) for *the* first calendar year after
22 the date of enactment of this subsection,
23 \$35,000; and

1 “(ii) for each calendar year after the
2 year described in clause (i), \$35,000 multi-
3 plied by the ratio (not less than one) of—

4 “(I) the Consumer Price Index
5 for all Urban Consumer (CPI-U, as
6 published by the Bureau of Labor
7 Statistics of the Department of
8 Labor) for the calendar year pre-
9 ceding such calendar year; to

10 “(II) the CPI-U for the calendar
11 year 2 years before the calendar year
12 described in clause (i).

13 “(2) LIMITATIONS ON DEFINED MONETARY AS-
14 SISTANCE.—

15 “(A) IN GENERAL.—A victim may only ob-
16 tain defined monetary assistance under this
17 subsection once.

18 “(B) EFFECT ON RECOVERY OF OTHER
19 RESTITUTION.—A victim who obtains defined
20 monetary assistance under this subsection shall
21 not be barred or limited from receiving restitu-
22 tion against any defendant for any offenses not
23 covered by this section.

24 “(C) DEDUCTION.—If a victim who re-
25 ceived defined monetary assistance under this

1 subsection subsequently seeks restitution under
2 this section, the court shall deduct the amount
3 the victim received in defined monetary assist-
4 ance when determining the full amount of the
5 victim's losses.

6 “(3) LIMITATIONS ON ELIGIBILITY.—A victim
7 who has collected payment of restitution pursuant to
8 this section in an amount greater than the amount
9 provided for under paragraph (1)(D) shall be ineli-
10 gible to receive defined monetary assistance under
11 this subsection.

12 “(4) GUARDIAN AD LITEM.—

13 “(A) IN GENERAL.—In all cases alleging
14 child pornography production, the court shall
15 appoint a guardian ad litem, who shall be an
16 attorney, for each identified victim of the child
17 pornography production, pursuant to section
18 3509(h).

19 “(B) FEES.—A guardian ad litem ap-
20 pointed pursuant to this subsection may not
21 charge, receive, or collect, without court ap-
22 proval for good cause shown, any fees or pay-
23 ment of expenses that in the aggregate exceed
24 10 percent of any defined monetary assistance
25 payment made under this subsection.

1 “(C) PENALTY.—Any guardian ad litem
2 who violates subparagraph (B) shall be fined
3 under this title, imprisoned for not more than
4 one year, or both.”.

5 **SEC. 5. ASSESSMENTS IN CHILD PORNOGRAPHY CASES.**

6 (a) ASSESSMENTS IN CHILD PORNOGRAPHY
7 CASES.—Chapter 110 of title 18, United States Code, is
8 amended by inserting after section 2259 the following:

9 **“§ 2259A. Assessments in child pornography cases**

10 “(a) IN GENERAL.—In addition to any other criminal
11 penalty, restitution, or special assessment authorized by
12 law, the court shall assess—

13 “(1) not more than \$17,000 on any person con-
14 victed of an offense under section 2252(a)(4) or
15 2252A(a)(5);

16 “(2) not more than \$35,000 on any person con-
17 victed of any other offense for trafficking in child
18 pornography; and

19 “(3) not more than \$50,000 on any person con-
20 victed of a child pornography production offense.

21 “(b) ANNUAL ADJUSTMENT.—The dollar amounts in
22 subsection (a) shall be adjusted annually in conformity
23 with the Consumer Price Index.

24 “(c) FACTORS CONSIDERED.—In determining the
25 amount of the assessment under subsection (a), the court

1 shall consider the factors set forth in sections 3553(a) and
2 3572.

3 “(d) IMPOSITION AND IMPLEMENTATION.—

4 “(1) IN GENERAL.—The provisions of sub-
5 chapter C of chapter 227 (other than section 3571)
6 and subchapter B of chapter 229 (relating to fines)
7 apply to assessments under this section, except that
8 paragraph (2) applies in lieu of any contrary provi-
9 sions of law relating to fines or disbursement of
10 money received from a defendant.

11 “(2) EFFECT ON OTHER PENALTIES.—Imposi-
12 tion of an assessment under this section does not re-
13 lieve a defendant of, or entitle a defendant to reduce
14 the amount of any other penalty by the amount of
15 the assessment. Any money received from a defend-
16 ant shall be disbursed so that each of the following
17 obligations is paid in full in the following sequence:

18 “(A) A special assessment under section
19 3013.

20 “(B) Restitution to victims of any child
21 pornography production offense that the de-
22 fendant committed.

23 “(C) An assessment under this section and
24 restitution to victims of any trafficking in child
25 pornography offenses.

1 “(D) Other orders under any other section
2 of this title.

3 “(E) All other fines, penalties, costs, and
4 other payments required under the sentence.”.

5 (b) CHILD PORNOGRAPHY VICTIMS RESERVE.—Sec-
6 tion 1402(d) the Victims of Crime Act of 1984 (34 U.S.C.
7 20101(d)) is amended by adding at the end the following:

8 “(6)(A) The Director may set aside up to
9 \$10,000,000 of the amounts remaining in the Fund in any
10 fiscal year after distributing the amounts under para-
11 graphs (2), (3), and (4), in a Child Pornography Victims
12 Reserve, which may be used by the Attorney General for
13 payments under section 2259(d) of title 18, United States
14 Code.

15 “(B) Amounts in the reserve may be carried over
16 from fiscal year to fiscal year, but the total amount of
17 the reserve shall not exceed \$10,000,000. Notwithstanding
18 subsection (c) and any limitation on Fund obligations in
19 any future Act, unless the same should expressly refer to
20 this section, any such amounts carried over shall not be
21 subject to any limitation on obligations from amounts de-
22 posited to or available in the Fund.”.

23 (c) CHILD PORNOGRAPHY VICTIMS RESERVE.—
24 Chapter 110 of title 18, United States Code, is amended

1 by inserting after section 2259A, as added by subsection
2 (a), the following:

3 **“§ 2259B. Child pornography victims reserve**

4 “(a) DEPOSITS INTO THE RESERVE.—Notwith-
5 standing any other provision of law, there shall be depos-
6 ited into the Child Pornography Victims Reserve estab-
7 lished under section 1402(d)(6) of the Victims of Crime
8 Act of 1984 all assessments collected under section 2259A
9 and any gifts, bequests, or donations to the Child Pornog-
10 raphy Victims Reserve from private entities or individuals.

11 “(b) AVAILABILITY FOR DEFINED MONETARY AS-
12 SISTANCE.—Amounts in the Child Pornography Victims
13 Reserve shall be available for payment of defined monetary
14 assistance pursuant to section 2259(d). If at any time the
15 Child Pornography Victims Reserve has insufficient funds
16 to make all of the payments ordered under section
17 2259(d), the Child Pornography Victims Reserve shall
18 make such payments as it can satisfy in full from available
19 funds. In determining the order in which such payments
20 shall be made, the Child Pornography Victims Reserve
21 shall make payments based on the date they were ordered,
22 with the earliest-ordered payments made first.

23 “(c) ADMINISTRATION.—The Attorney General shall
24 administer the Child Pornography Victims Reserve and

1 shall issue guidelines and regulations to implement this
2 section.

3 “(d) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that individuals who violate this chapter before this
5 legislation is enacted, but who are sentenced after this leg-
6 islation is enacted, shall be subject to the statutory scheme
7 that was in effect at the time the offenses were com-
8 mitted.”.

9 (d) CLERICAL AMENDMENT.—The table of sections
10 for chapter 110 of title 18, United States Code, is amend-
11 ed by inserting after the item relating to section 2259 the
12 following:

“2259A. Assessments in child pornography cases.
“2259B. Child pornography victims reserve.”.

13 **SEC. 6. CHILD PORNOGRAPHY VICTIM’S RIGHT TO EVI-**
14 **DENCE.**

15 Section 3509(m) of title 18, United States Code, is
16 amended by adding at the end the following:

17 “(3)(A) In any criminal proceeding, a victim of
18 trafficking in child pornography or child pornog-
19 raphy production, as those terms are defined in sec-
20 tion 2259(c), shall have access to any property or
21 material that constitutes child pornography, as de-
22 fined by section 2256, depicting the victim, for in-
23 spection, viewing, and examination at a Government
24 facility, by the victim, his or her attorney, and any

1 individual the victim may seek to qualify to furnish
2 expert testimony.

3 “(B) A victim of trafficking in child pornog-
4 raphy or child pornography production, as those
5 terms are defined in section 2259(c), his or her at-
6 torney, and any individual the victim may seek to
7 qualify to furnish expert testimony may not copy,
8 photograph, duplicate, or otherwise reproduce any
9 property or material that constitutes child pornog-
10 raphy, as defined by section 2256 of this title, so
11 long as the Government makes the property or mate-
12 rial reasonably available to the victim, his or her at-
13 torney, and any individual the victim may seek to
14 qualify to furnish expert testimony.”.

15 **SEC. 7. CLERICAL AMENDMENTS.**

16 (a) EXPANSION OF CIVIL REMEDIES FOR SATISFAC-
17 TION OF AN UNPAID FINE.—Section 3613(c) of title 18,
18 United States Code, is amended by inserting “an assess-
19 ment imposed pursuant to section 2259A of this title,”
20 after “pursuant to the provisions of subchapter C of chap-
21 ter 227 of this title,”.

22 (b) CLARIFICATION OF INTERSTATE OR FOREIGN
23 COMMERCE PROVISION REGARDING CERTAIN ACTIVITIES
24 PERTAINING TO CHILD PORNOGRAPHY.—Section 2252A
25 (a)(2) of title 18, United States Code, is amended—

1 (1) in subparagraph (A)—

2 (A) by striking “using any means or facil-
3 ity of interstate or foreign commerce” and in-
4 serting “has been”; and

5 (B) by inserting “using any means or facil-
6 ity of interstate or foreign commerce or” after
7 “child pornography”; and

8 (2) in subparagraph (B)—

9 (A) by striking “using any means or facil-
10 ity of interstate or foreign commerce” and in-
11 serting “has been”; and

12 (B) by inserting “using any means or facil-
13 ity of interstate or foreign commerce or” after
14 “child pornography”.

15 (c) CLARIFICATION OF THE DEFINITION OF “SEXU-
16 ALLY EXPLICIT CONDUCT”.—Section 2256(2) of title 18,
17 United States Code, is amended—

18 (1) in subparagraph (A)(v)—

19 (A) by inserting “anus,” before “genitals”;
20 and

21 (B) by inserting a comma after “genitals”;
22 and

23 (2) in subparagraph (B)(iii)—

24 (A) by inserting “anus,” before “genitals”;
25 and

1 (B) by inserting a comma after “genitals”.

2 (d) CLARIFICATION OF THE EXTENT OF THE OF-
3 FENSE OF COERCION AND ENTICEMENT OF A MINOR.—
4 Section 3559(e)(2)(A) of title 18, United States Code, is
5 amended by striking “into prostitution”.

6 **SEC. 8. REPORT ON IMPLEMENTATION.**

7 Not later than 24 months after the date of enactment
8 of this Act, the Attorney General shall submit to Congress
9 a report on the progress of the Department of Justice in
10 implementing the amendments made by sections 3
11 through 5.

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